In the High Court of Punjab and Haryana at Chandigarh

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(1) C.W.P. No.5691 of 2005

.....

Date of decision:7.9.2006

Sandeep Kumar

.....Petitioner

v.

State of Haryana and others

.....Respondents

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(2) C.W.P. No.4191 of 2005

.....

Kanwar Baljeet Singh and another

.....Petitioners

v.

State of Haryana and others

.....Respondents

....

(3) C.W.P. No.10225 of 2006

.....

Pardeep Kumar

.....Petitioner

v.

State of Haryana and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. R.K. Malik, Advocate for the petitioners (in CWP Nos.5691 and 4191 of 2005).

Mr. Anuraag Goyal, Advocate for the petitioner in CWP No. 10225 of 2006.

Mr. Anil Rathee, Additional Advocate General, Haryana for the respondents.

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S.S. Saron, J.

This order will dispose of CWP Nos.5691 and 4191 of 2005 and 10225 of 2006 as they involve similar facts and same questions of law.

The petitioner Sandeep Kumar in CWP No.5691 of 2005 and petitioners Kanwar Baljeet Singh and Raman Kumar in CWP No.4191 of 2005 in response to an advertisement issued by the respondents in the month of November 2003 applied for the post of Constables in the Indian Reserve Battalion (`IRB' – for short) with registration No.608 and 1410 and 862 respectively. The petitioner Pardeep Kumar in CWP No.10225 of 2006 also applied for the post of Constable in the IRB. The advertisement was issued for recruitment in respect of 740 posts of Constables in the IRB out of which 648 posts were for general duty constables. The last date for submitting applications was 15.12.2003. The recruitment was to be made at two centres for IRB at Gurgaon and for the Railways at Ambala. Before the physical test for selection could be held the elections to the Lok Sabha were

notified on 17.12.2004 by the Election Commission of India. In view of the elections being announced, the model code of conduct for holding elections came into effect. The elections to the Lok Sabha were held in the month of April/May 2004 and the code of conduct came to an end in the month of May 2004. The petitioner Sandeep Kumar in CWP No.5691 of 2005 and petitioners Kanwar Baljeet Singh and Raman Kumar in CWP No.4191 of 2005 were thereafter in July 2004 called for physical efficiency test. They passed the said test and were interviewed in August 2004. The petitioner Pardeep Kumar in CWP No.10225 of 2006 was also vide letter dated 14.8.2004 called for interview on 5.9.2004 along with his original certificates etc. The result of the selection was announced on 9.10.2004 and the petitioner Sandeep Kumar was placed at serial No.4 in the waiting list of the Ambala Board. The petitioners Kanwar Baljeet Singh and Raman Kumar were placed at serial Nos.2 and 5 respectively of the waiting list of the Gurgaon Board. The name of petitioner Pardeep Kumar also figured in the waiting list under Roll No.1050 at serial No.2 of the waiting list of Ambala Board. The cases of the candidates at serial Nos.1 to 10 in the waiting lists were sent to the Director General of Police, Haryana for his approval as candidature of some candidates who had appeared in the selection process was cancelled on the ground of making concealment of material facts in the relevant columns of the applications seeking appointment. In December 2004, the Director General of Police Haryana it is stated gave his approval for appointment of the petitioners Sandeep Kumar and Kanwar Baljeet Singh and Raman Kumar. The petitioner Sandeep Kumar was thus selected for the post of Constable in IRB vide

teleprinter message dated 8.10.2004 and letter dated 17.12.2004. The petitioners Kanwar Baljeet Singh and Raman Kumar were also similarly selected vide teleprinter message dated 27.12.2004. The Commandant 2nd Battalion, IRB/C sought the medical examination reports, character antecedents verification reports in respect of the said petitioners. The petitioner Sandeep Kumar was found medically fit by the Chief Medical Officer, Rewari vide certificate dated 30.12.2004. Similarly, the petitioners Kanwar Baljeet Singh and Raman Kumar were found medically fit by the Chief Medical Officer, Gurgaon vide certificate dated 29.12.2004 submitted to the Commandant in Form No.10.64. The petitioner Pardeep Kumar also states that he was selected by the respondent-Department and his name figures in the list of selected candidates in the waiting list under Roll No.1050 at serial No. 2 of the Ambala Board. However, the petitioners were not appointed because in the meantime on 17.12.2004 the election to the Haryana State Assembly were notified and the model code of conduct for holding elections had again come into operation. On account of the coming into effect of the said code of conduct, the petitioners were not given constabulary numbers. The petitioners, therefore, in their respective petitions under Articles 226/227 of the Constitution of India seek directions for calling for the records of the respondents concerning their selection as Constables in IRB in the recruitment process and after perusal of the record a direction be issued to the respondents to allow them to assume their duties as Constables by issuing them the constabulary numbers as most of the Constables have already been allowed to join their duties. The petitioner Pardeep Kumar in view of the model code of conduct for holding elections

coming into force filed CWP No.19578 of 2005 in this Court seeking a direction for his appointment on the post of Constable with all consequential benefits as he stood duly selected and even his medical examination was conducted. A Division Bench of this Court on 16.12.2005 disposed of the aforesaid writ petition filed by Pardeep Kumar with a direction to treat the legal notice (Annexure-P.5 with CWP No.19578 of 2005) as a representation and take a decision thereon. It was also directed that in case the petitioner's (Pardeep Kumar's) claim was to be denied, reasons therefor should be given in the order itself and communicated to him. In compliance to the said order dated 16.12.2005, the Commandant 2nd Battalion IRB, Bhondsi, Gurgaon vide order dated 3.5.2006 declined the claim of the petitioner by observing that his claim cannot be acceded to at this stage as some similar situated candidates who were at serial Nos.2 and 5 of the waiting list of the Gurgaon Board had filed CWP No.4191 of 2005 titled as Kanwar Baljeet Singh v. State of Haryana. The petitioner Pardeep Kumar seeks quashing of the said order dated 3.5.2006 whereby his claim has been rejected on the ground that the writ petition of similarly situated persons is pending.

On notice of motion, written statements have been filed in Sandeep Kumar's case (CWP No.5691 of 2005) and Kanwar Baljeet Singh's case (CWP No.4191 of 2005) by the Commandant 2nd IRB, Bhondsi, Gurgaon (respondent No.4) on behalf of respondents No.1 to 5. No reply has been filed in Pardeep Kumar's case (CWP No.10225 of 2006). It is stated in the replies that have been filed that the present petitions are not maintainable and are liable to be dismissed. It is submitted that 740 posts of

Constables for recruitment against sanctioned strength of first and second India Reserve Battalion/C (Gurgaon) were advertised and recruitment process was started w.e.f. 15.12.2003 through two Selection Boards at Gurgaon and Ambala. The selection process was completed and result was declared on 9.10.2004 by the Selection Boards. The petitioner Sandeep Kumar in CWP No.5691 of 2005 is at serial No.4 on the waiting list of the Ambala Board in the general category candidates. The petitioners Kanwar Baljeet Singh and Raman Kumar in CWP No.4191 of 2005 are at serial Nos.2 and 5 respectively on the waiting list of Gurgaon Board in general category candidates. The petitioner Sandeep Kumar who is on the waiting list at serial No.4 of the Ambala Board in general category, it is stated, can be considered only after considering the claim of persons at serial Nos.1, 2 and 3 on the waiting list of the same Board in the same category. Similarly, it is stated that candidates who are in the waiting list at serial Nos.2 and 5 respectively of the Gurgaon Board in general category i.e. petitioners Kanwar Baljeet Singh and Raman Kumar can be considered only after considering the claims of persons senior to them on the waiting list of the same Board in the same category. Besides, it is submitted that the candidates who were selected and were denied appointments due to various reasons like criminal cases pending against them had submitted representations/appeals with the authorities. Some of them have also approached the Courts seeking redressal of their grievance. Claim of the petitioners can be considered only after representations/appeals pending against the rejection of the selected candidates at the stage of character verification etc. are disposed of. The consideration of appointment of

candidates on the waiting list would also depend on the judicial verdict in the litigation initiated by the rejected candidates in the Courts. It is denied that the name of the respective petitioners were specifically recommended for appointment. A general permission was taken by respondent No.4 from the Director General of Police (respondent No.2) for appointment of the waiting list candidates against those selected candidates whose character and antecedents were not found good during the verification process. However, the appointment of the waiting list candidates, it is stated, is a matter which depends on final rejection of selected candidates. It is, however, accepted that the petitioners were found medically fit by the Chief Medical Officers. Besides, it is stated that no waiting list candidate has been given appointment.

We have heard learned counsel for the parties.

Learned counsel appearing for the petitioners have contended that in fact the petitioners stand duly recruited as Constables. They are fully qualified and physically fit and they have only to assume their duties by assigning them their Constabulary numbers/belt numbers by the authorities. It is submitted that in view of the letter dated 17.12.2004 and 27.12.2004, the petitioners stand appointed. Besides, the fact that they have been found to be medically fit in the medical examination that was conducted, they stand appointed. Strong reliance is placed on the orders passed by a Division Bench of this Court in the cases of Rajiv Kumar v. State of Haryana, CWP No.11062 of 2004, decided on 9.8.2005 and Virender Singh v. State of Haryana, CWP No.10379 of 2005, decided on 3.10.2005.

In response learned Additional Advocate General, Haryana

appearing for the respondents submits that merely because the petitioners have been found medically fit and certain letters relied upon by the petitioners have been issued, would create no indefeasible right of appointment on the petitioners. Besides, no person higher in merit than the petitioner Sandeep Kumar from the list of candidates in the general category of the Ambala Board and petitioners Kanwar Baljeet Singh and Raman Kumar from the list of candidates in general category of the Gurgaon Board and petitioner Pardeep Kumar from the list of general candidates in the Ambala Board have been recommended for appointment. Besides, it is contended that in similar circumstances a Division Bench of this Court in the case of Narender Singh and another v. State of Haryana, CWP No.6338 of 2006, decided on 20.7.2006 has dismissed the claim of the petitioners therein. Therefore, the stand taken by the petitioner is misconceived.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the parties. The petitioners Pardeep Kumar and Sandeep Kumar are at serial Nos.2 and 4 respectively of the waiting list of the Ambala Board. The petitioners Kanwar Baljeet Singh and Raman Kumar are at serial Nos.2 and 5 respectively of the waiting list of Gurgaon Board. The petitioners Pardeep Kumar and Sandeep Kumar who are admittedly on the waiting list of selected candidates in the general category at serial No.2 and 4 respectively of the Ambala Board, have not shown that any person senior to them has been offered appointment or has been appointed as a constable from amongst the candidates of the Ambala Board. The petitioners Kanwar Baljeet Singh and Raman Kumar who are at serial Nos.2 and 5 respectively in the waiting list of selected candidates in

the general category of the Gurgaon Board, have also not shown that any person senior to them has been offered appointment or has been appointed as a Constable from amongst the candidates of the Gurgaon Board. The recruitment of Police Constables in the State of Haryana is governed by the Punjab Police Rules, 1934 (`1934 Rules' - for short) as amended by the Punjab Police (Haryana Amendment) Rules, 1998 (`1998 Amendment Rules' - for short). By a notification dated 17.6.1998, the 1998 Amendment Rules which amended the 1934 Rules came into force. Rules 12.14 to 12.18 of the 1934 Rules were substituted by the new 1998 Amendment Rules. Chapter-XII of the 1934 Rules relates to `appointments and enrollments' in the Police. Rule 12.14 of the 1998 Amendment Rules which substitutes the earlier 1934 Rules provides for nationality domicile and character of candidates. Rule 12.15 relates to age, physical standard and academic qualifications. Rule 12.16 provides the procedure for recruitment of Constables, which are to be filled up by direct recruitment. Sub-rule (22) of Rule 12.16 of the 1998 Amendment Rules inter alia provides that there shall be no waiting list. Rule 12.16 (22) of the 1998 Amendment Rules reads as under:-

> "(22) Candidates shall be appointed as Constables as per the notified vacancies for the concerned unit and the candidates who are left for want of vacancies even though they have been found medically fit and their character had also been verified as good, shall be deemed to have not been selected finally and there shall be no waiting list."

A perusal of the above sub-rule (22) to Rule 12.16 would show that

even if a candidate is found medically fit and his character has also been verified as good, shall be deemed to have not been selected finally; besides, there is to be no waiting list. Therefore, the stand of the learned counsel for the petitioners that on the verification of the character of the petitioners and they being found medically fit is a deemed appointment is not sustainable. Said sub-rule (22) was considered in Narender Singh's case (CWP No.6338 of 2006) (supra) and after noticing the observations of the Supreme Court in Shankarsan Dash v. Union of India, AIR 1991 SC 1612 and in State of Uttar Pradesh and others v. Raj Kumar Sharma and others, 2006 (2) RSJ 284 (SC), it was observed that the petitioner therein had no indefeasible right to appointment after selection. In Shankarsan Dash's case (supra) it was observed that ordinarily the notification regarding filling-up of vacant posts merely amounts to an invitation to qualified candidates who had applied for recruitment. However, on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies.

The reliance placed by the learned counsel for the petitioners on the orders passed by this Court in the cases of Rajiv Kumar and others v. State of Haryana (CWP Nos.11062 of 2004) and Virender Singh v. State of Haryana (CWP No.10379 of 2005) wherein directions have been given for filling up the vacant post from amongst the waiting list do not confer any right on the petitioners. In Rajiv Kumar's case (supra) directions were issued by this Court for filling-up the candidates from amongst the waiting list relating to the proficient sportsmen category. The petitioners in the said case were Volley Ball players and had qualified the test. They were on the

waiting list. Out of the 11 posts reserved for Volley Ball players, two candidates from amongst the 11 selected candidates were not permitted to join duty with the result the posts had remained unfilled. In the written statement filed in the said case no reasons whatsoever had been spelt out as to why the petitioners therein were being denied appointment. Accordingly, this Court was of the opinion that the respondents should fill up the two posts which were lying vacant as per the merit list from amongst the candidates who were on the waiting list maintained by the respondents. The same is not the position in the case in hand. Varinder Singh's case (supra) relates to appointment of a candidate at serial No.3 of the Gurgaon Board in general category. This Court was of the opinion that it would be appropriate that the petitioner therein be given appointment subject to the conditions that he would be removed from service if candidates at serial No.1 or 2 in the said waiting list seek appointment besides, the appointment was to be made subject to the outcome of the Court cases/representations/ appeals of persons higher in merit which were stated to be pending before various authorities. The appointment letter to be given to the petitioner therein was subject to the said two conditions. In respect of petitioners Pardeep Kumar and Sandeep Kumar it has not been shown by them that any candidate senior to them from the Ambala Board has been appointed. The petitioner Kanwar Baljeet Singh who is at serial No.2 of the waiting list of the Gurgaon Board may have some claim as directions have been issued in Varinder_Singh's case (CWP No.10379 of 2005) (supra) who was at serial No.3 of the waiting list of the Gurgaon Board in general category. However, on 19.1.2006 it was stated by the learned counsel appearing for

the State of Haryana that Varinder Singh aforesaid had not been given appointment till date. The said position is reiterated by the learned Additional Advocate General appearing for the State i.e. that Varinder Singh aforesaid has not been given appointment till date. In any case his appointment is subject to two conditions viz (i) that the petitioner Varinder Singh would be removed from service if the candidates at serial No.1 or 2 in the waiting list seek appointment and (ii) that the appointment of Varinder Singh was to be made subject to the outcome of the Court cases/representations/appeals of persons higher in merit which were pending. Therefore, Kanwar Baljeet Singh having staked his claim in the present petition, the conditions provided in the order passed in Varinder Singh's case (supra) would become operative. It is appropriate to note that in fact the preparation of waiting list is prohibited by the statutory rules i.e. Rule 12.16(22) of 1998 Amendment Rules against which there is no estoppel. The directions for appointment issued by this Court in Rajiv Kumar's case (supra) and Varinder Singh's (supra) are confined to their own facts. In fact, the directions issued by this Court in the said cases were considered in Narender Singh's case (supra) and the writ petition was dismissed. Therefore, the claim made by Kanwar Baljeet Singh and Raman Kumar petitioners in CWP No.4191 of 2005 is clearly unsustainable in the face of the statutory rules and the decision of this Court in Narender Singh's case (supra). In the circumstances, in view of the decision rendered in the case of Narender Singh's (supra), no legal rights of the petitioners have been infringed.

Accordingly, the writ petitions are dismissed.

(S.S. Nijjar)
Judge

September 7, 2006.

(S.S. Saron)
Judge

hsp

Whether fit for indexing: Yes